IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14237 of 2005
With
SPECIAL CIVIL APPLICATION No. 12049 of 2005
To
SPECIAL CIVIL APPLICATION No. 12061 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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C.B.GANESHA WORK CHARGE CLERK - Petitioner(s)

Versus

DIRECTOR OF DISTRICT RURAL DEVELOPMENT AGENCY & 2 - Respondent(s)

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Appearance :
MR RN SHAH for Petitioner No(s).: 1.
MR.SUNIL JOSHI, FOR Respondent No(s).: 1 & 2

MR.DIPEN DESAI, A.G.P. for Respondent No(s).: 3.
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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date : 22/07/2005

ORAL JUDGMENT

RULE. Learned Advocate Mr.Joshi wavies service of rule on behalf of the respondents no.1 and 2. Mr.Dipen Desai, learned A.G.P. wavies service of rule on behalf of the

respondent no.3. With the consent of the learned Advocates for the parties, this Special Civil Application alongwith other cognate matters is taken up for final hearing today. Since, the issue involved in all these petitions is common, all these petitions are disposed of by this common judgment.

2. The petitioners are serving as work charge clerks under the respondent no.1 i.e. the Director of District Rural Development Agency, Godhra, Dist: Panchmahals. They are getting the regular pay-scale of Rs.3050-4590. It is the case of the petitioners that initially some of the petitioners had preferred Special Civil Application before this High Court for regularisation of their services. The learned Single Judge of this Court on 22/3/2005 passed common order in Special Civil Application No.1985/2004 with Special Civil Application No.2012/2004 permitting the petitioners to make a representation in connection with regularisation of their services. Subsequently, the Director of District Rural Development Agency passed an order and taken away the benefit of regular pay-scale by fixing the pay of the petitioner at Rs.2600/- with effect from 8/2/2005. The Director has also directed that appropriate recovery should be made from the salary of the petitioners with effect from 8/6/1998. Therefore, it is the grievance of the petitioners that by the impugned order the benefit of regular pay-scale is taken away and now the pay of petitioners is fixed at Rs.2600/- and, subsequently, order of recovery is also passed. It is further submitted that no opportunity of hearing is given to the petitioners before passing such order regarding taking away the benefit of regular pay-

scale and also before passing the order of recovery from the salary of the petitioners.

3. Learned Advocate for the respondent No.1, Mr.Joshi has submitted that the respondent No.1 was justified in passing the order, as the petitioners were not regularly selected at the relevant time. He has further submitted that the petitioners are not entitled to get the regular pay-scale unless their services are regularised by the Department. The concerned Officer of the Department is present before this Court and after taking instructions from him, Mr.Joshi has also stated that before passing the impugned order no opportunity of hearing the petitioners is given.

4. By the impugned order the benefit of regular pay-scale given to the petitioners is taken away and order of recovery is passed. In my view if any adverse order is passed without giving the opportunity of hearing to the concerned persons, the same is not legal and valid and is against the principles of natural justice. In this case the petitioners were required to be given an opportunity of hearing by the respondent no. 1 but the same has not been given. Therefore, the matter is sent back to the respondent no.1 and after hearing the petitioners, respondent no.1 shall pass appropriate order as deemed fit, just and proper in the facts and circumstances of the case. If such order is against the petitioners, it will be open to the petitioners to challenge the same in accordance with law before the appropriate forum. By this common judgment the petitions are partly allowed with the aforesaid directions. Writ to be sent to the respondent no.1

forthwith. It is clarified that this Court has not adjudicated the dispute involved in these petitions on its merits. It is for the respondent no.1 to decide the case of the petitioners after giving an opportunity of hearing to the petitioners and thereafter the respondent no.1 shall pass the appropriate order.

5. With the above observations and directions these petitions are partly allowed. Rule made absolute to the above extent. No order as to costs. Direct Service is permitted.

(P.B.MAJMUDAR, J.)

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